

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

3:05CV378-MU-1

3:02CR182-MU

DARRIUS JAVARED YOUNG,)
)
 Petitioner,)
)
 v.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)
_____)

ORDER

THIS MATTER comes before the Court upon its own motion.

On August 25, 2005, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence. In his motion to vacate, Petitioner claimed, among other things, that he asked his counsel to file a direct appeal but that his counsel failed to file the requested appeal. This Court dismissed Petitioner's other claims without prejudice and granted his ineffective assistance of counsel claim based upon the holding in United States v. Peak, 992 F.2d 39 (4th Cir. 1993). This Court then ordered that Petitioner's original criminal judgment be vacated and a new criminal judgment be entered. In addition, this Court ordered that the Clerk file a notice of appeal on Petitioner's behalf.

It has come to the Court's attention that due to clerical oversight no notice of appeal was ever filed. To correct this court error, the Court will vacate the September 21, 2005, amended criminal judgment and enter a new one.

THEREFORE, IT IS HEREBY ORDERED that:

1. Petitioner's September 21, 2005, criminal judgment is vacated;
2. The Clerk is directed to prepare a new criminal judgment with the same sentence and conditions; and
3. The Clerk is directed to file a notice of appeal on Petitioner's behalf.

Signed: December 5, 2005

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

